

AMENDED IN SENATE APRIL 20, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 204

Introduced by Senators Benoit, Huff, and Runner
(Coauthor: Assembly Member Hagman)

February 23, 2009

An act to amend Sections 17405, 17600, 50123, and 50124 of, and to amend and repeal Section 17207 of, the Financial Code, relating to financial transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 204, as amended, Benoit. Financial transactions: regulation.

Existing law provides for the licensing and regulation of escrow agents by the Commissioner of Corporations. Existing law, until January 1, 2010, requires each escrow agent to pay an annual license fee of up to \$2,800 for each office or location and authorizes the commissioner to additionally levy a special assessment *of up to \$500*, which is required to be paid by the escrow agent within 30 days of receipt of notification by the commissioner, for each office or location in certain circumstances. Commencing January 1, 2010, existing law instead requires each escrow agent to pay to the commissioner the agent's pro rata share of the commissioner's annual administrative costs and expenses, as specified.

This bill would repeal the provisions that would require an escrow agent, commencing January 1, 2010, to pay to the commissioner the agent's pro rata share of the commissioner's annual administrative costs and expenses. The bill would, instead, continue the requirement for an escrow agent to pay an annual license fee of up to \$2,800 for each office or location. The bill would authorize the special assessment that may be levied by the commissioner to be in an amount of up to \$1,000 *for*

each office or location. The bill would require an escrow agent to pay the special assessment within 60 days of notification by the commissioner. ~~The bill would require the commissioner to submit a budget and program justification and information to the Escrow Law Advisory Committee prior to providing notice of a special assessment to escrow agents.~~

Existing law authorizes the commissioner to conduct examinations, as specified, of a new licensee within one year and within 2 years of the issuance of a license.

This bill would require the commissioner to conduct the examinations, as specified, of new licensees or upon change of ownership.

Existing law provides that the license of an escrow agent remains in effect until surrendered, revoked, or suspended. Existing law sets forth the procedure for the surrender of the license of an escrow agent, and requires a surrendering licensee to, among other things, ~~notify the commissioner in writing of surrender,~~ tender his or her license and all other indicia of licensure to the commissioner, and, ~~within 105 days of the written notification,~~ submit a closing audit to the commissioner, as specified. Existing law provides that a license is not surrendered until the commissioner has reviewed and accepted the closing audit, made a determination that there is no violation of law, and, in writing, accepted tender of the license.

This bill would delete the requirement that the commissioner make a determination that there is no violation of law; and instead require a determination that acceptance of *a the* surrender is in the public interest.

Existing law, the California Residential Mortgage Lending Act, provides for the licensure and regulation of residential mortgage lenders and servicers by the Commissioner of Corporations. Existing law provides that the license of a residential mortgage lender or servicer remains in effect until surrendered, revoked, or suspended. Existing law sets forth the procedure for the surrender of the license of a residential mortgage lender or servicer, and requires a surrendering licensee to, among other things, notify the commissioner in writing of surrender, tender his or her license and all other indicia of licensure to the commissioner, and file a plan for the withdrawal from regulated business that includes a timetable for the disposition of business and a closing audit, review, or, if agreed upon, a procedure performed by an independent certified public accountant as prescribed by rule or order of the commissioner. Existing law provides that a license is not surrendered until the commissioner has, in writing, accepted tender

after review, made a finding on the withdrawal plan, and made a determination that there is no violation of law.

This bill would delete the provision that allows the licensee's withdrawal plan to include an agreed-upon procedure performed by an independent certified public accountant, and instead provide that the withdrawal plan include any other document prescribed by rule or order of the commissioner, including a document that demonstrates that all custodial fund accounts have been properly transferred and closed. The bill would also delete the requirement that the commissioner make a determination that there is no violation of law, and instead require a determination that acceptance of *a* the surrender is in the public interest.

Existing law, the California Residential Mortgage Lending Act, requires an application for licensure to be accompanied by an exhibit containing statements that the applicant agrees to take specified actions, including, but not limited to, agreeing to notify the commissioner, in writing, by certified mail, return receipt requested, prior to opening a branch office in this state or changing the business location or locations of the applicant, as specified.

This bill would require the application for licensure to include a statement that the applicant agrees to notify the commissioner prior to the closing of a business location.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17207 of the Financial Code, as amended
- 2 by Section 1 of Chapter 257 of the Statutes of 2005, is amended
- 3 to read:
- 4 17207. The commissioner shall charge and collect the following
- 5 fees and assessments:
- 6 (a) For filing an application for an escrow agent's license, six
- 7 hundred twenty-five dollars (\$625) for the first office or location
- 8 and four hundred twenty-five dollars (\$425) for each additional
- 9 office or location.
- 10 (b) For filing an application for a duplicate of an escrow agent's
- 11 license lost, stolen, or destroyed, or for replacement, upon a
- 12 satisfactory showing of the loss, theft, destruction, or surrender of
- 13 certificate for replacement, two dollars (\$2).

1 (c) For investigation services in connection with each
2 application, one hundred dollars (\$100), and for investigation
3 services in connection with each additional office application, one
4 hundred dollars (\$100).

5 (d) For holding a hearing in connection with the application, as
6 set forth under Section 17209.2, the actual costs experienced in
7 each particular instance.

8 (e) (1) Each escrow agent shall pay to the commissioner for
9 the support of this division for the ensuing year an annual license
10 fee not to exceed two thousand eight hundred dollars (\$2,800) for
11 each office or location.

12 (2) On or before May 30 in each year, the commissioner shall
13 notify each escrow agent by mail of the amount of the annual
14 license fee levied against it, and that the payment of the invoice
15 is payable by the escrow agent within 30 days after receipt of
16 notification by the commissioner.

17 (3) If payment is not made within 30 days, the commissioner
18 may assess and collect a penalty, in addition to the annual license
19 fee, of 10 percent of the fee for each month or part of a month that
20 the payment is delayed or withheld.

21 (4) If an escrow agent fails to pay the amount due on or before
22 the June 30 following the day upon which payment is due, the
23 commissioner may by order summarily suspend or revoke the
24 certificate issued to the company.

25 (5) If, after an order is made pursuant to paragraph (4), a request
26 for a hearing is filed in writing and a hearing is not held within 60
27 days thereafter, the order is deemed rescinded as of its effective
28 date. During any period when its certificate is revoked or
29 suspended, a company shall not conduct business pursuant to this
30 division, except as may be permitted by order of the commissioner.
31 However, the revocation, suspension, or surrender of a certificate
32 shall not affect the powers of the commissioner as provided in this
33 division.

34 (f) Fifty dollars (\$50) for investigation services in connection
35 with each application for qualification of any person under Section
36 17200.8, other than investigation services under subdivision (c)
37 of this section.

38 (g) A fee not to exceed twenty-five dollars (\$25) for the filing
39 of a notice or report required by rules adopted pursuant to
40 subdivision (a) or Section 17203.1.

(h) (1) If costs and expenses associated with the enforcement of this division, including overhead, are or will be incurred by the commissioner during the year for which the annual license fee is levied, and that will or could result in the commissioner's incurring of costs and expenses, including overhead, in excess of the costs and expenses, including overhead, budgeted for expenditure for the year in which the annual license fee is levied, then the commissioner may levy a special assessment on each escrow agent for each office or location in an amount estimated to pay for the actual costs and expenses associated with the enforcement of this division, including overhead, in an amount not to exceed one thousand dollars (\$1,000) for each office or location. The commissioner shall notify each escrow agent by mail of the amount of the special assessment levied against it, and that payment of the special assessment is payable by the escrow agent within 60 days of receipt of notification by the commissioner. The funds received from the special assessment shall be deposited into the State Corporations Fund and shall be used only for the purposes for which the special assessment is made.

(2) If payment is not made within 60 days, the commissioner may assess and collect a penalty, in addition to the special assessment, of 10 percent of the special assessment for each month or part of a month that the payment is delayed or withheld. If an escrow agent fails to pay the special assessment on or before 60 days following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company. If an order is made under this subdivision, the provisions of paragraph (5) of subdivision (e) shall apply.

(3) If the amount collected pursuant to this subdivision exceeds the actual costs and expenses, including overhead, incurred in the administration and enforcement of this division and any deficit incurred, the excess shall be credited to each escrow agent on a pro rata basis.

~~(4) Prior to notifying an escrow agent of a special assessment under this subdivision, the commissioner shall submit, as part of a regular meeting of the Escrow Law Advisory Committee created under this division, any budget and program justification and information for the current or prior budget years that would support the special assessment.~~

1 SEC. 2. Section 17207 of the Financial Code, as amended by
2 Section 2 of Chapter 257 of the Statutes of 2005, is repealed.

3 SEC. 3. Section 17405 of the Financial Code is amended to
4 read:

5 17405. (a) The business, accounts and records of every person
6 performing as an escrow agent, whether required to be licensed
7 under this division or not, are subject to inspection and examination
8 by the commissioner at any time without prior notice. The
9 provisions of this section shall not apply to persons specified in
10 Section 17006.

11 (b) Any person subject to this division shall, upon request,
12 exhibit and allow inspection and copying of any books and records
13 by the commissioner or his or her authorized representative.

14 (c) (1) The commissioner shall conduct an examination of each
15 licensed escrow agent as described in subdivision (a) as often as
16 the commissioner deems necessary and appropriate, but not less
17 than once every 48 months.

18 (2) The examination shall be conducted for the 12-month period
19 immediately preceding the date that the examination is commenced
20 unless the commissioner finds, based on information uncovered
21 in the examination or in the most recent independent audit report,
22 that the examination should be extended beyond the 12-month
23 period.

24 (3) In determining how often an examination shall be conducted,
25 the commissioner may consider each licensed escrow agent's
26 compliance with the requirements set forth in this division and
27 other factors the commissioner may by rule or order designate.

28 (4) This subdivision shall apply only to examinations
29 commenced after the effective date established by the rule or order
30 of the commissioner for the factors described in paragraph (3).

31 (d) Notwithstanding subdivision (c), the commissioner shall
32 conduct an indoctrination or preliminary examination, or both,
33 under this section of any new licensee or of a change of ownership
34 within one year of the issuance of the license under this division,
35 and an examination described in subdivision (a) within two years
36 of the issuance of the license or of the change of ownership under
37 this division.

38 SEC. 4. Section 17600 of the Financial Code is amended to
39 read:

1 17600. (a) An escrow agent's license remains in effect until
2 surrendered, revoked, or suspended.

3 (b) A licensee that ceases to engage in the business regulated
4 by this division and desires to no longer be licensed shall notify
5 the commissioner in writing and, at that time, tender the license
6 and all other indicia of licensure to the commissioner. Within 105
7 days of the written notice to the commissioner, the licensee shall
8 submit to the commissioner, at its own expense, a closing audit
9 report as of the date the license is tendered to the commissioner
10 for surrender, or for another period as the commissioner may
11 specify, to be performed by an independent certified public
12 accountant. The closing audit shall include, but not be limited to,
13 information required by the commissioner, a bank reconciliation
14 of the trust account, and a verified statement from a certified public
15 accountant confirming lawful disbursement of funds. A license is
16 not surrendered until the commissioner has reviewed and accepted
17 the closing audit report, a determination has been made by the
18 commissioner that acceptance of the surrender is in the public
19 interest, and tender of the license is accepted in writing by the
20 commissioner.

21 SEC. 5. Section 50123 of the Financial Code is amended to
22 read:

23 50123. (a) A license shall remain in effect until suspended,
24 surrendered, or revoked.

25 (b) A licensee that ceases to engage in the business regulated
26 by this division and desires to no longer be licensed shall inform
27 the commissioner in writing and, at that time, surrender the license
28 and all other indicia of licensure to the commissioner. The licensee
29 shall file a plan for the withdrawal from regulated business, and
30 the plan shall include a timetable for the disposition of the business.
31 The plan shall also include a closing audit, review, or any other
32 document prescribed by rule or order of the commissioner,
33 including, but not limited to, any document or documents that
34 demonstrate that all custodial fund accounts have been properly
35 transferred and closed. Upon receipt of the written notice and plan,
36 the commissioner shall review the plan and, if satisfactory to the
37 commissioner, shall accept the surrender of the license. A license
38 is not surrendered until its tender is accepted in writing by the
39 commissioner after a review, and a finding has been made on the
40 licensee's plan required to be filed by this section, and a

1 determination has been made that acceptance of the surrender is
2 in the public interest.

3 (c) A licensee may not surrender its license under this division
4 and, under the authority of a real estate license, subsequently
5 engage in residential mortgage lending or servicing activities that
6 are subject to this division, unless the licensee has been licensed
7 under this division for a period of five years or more.

8 SEC. 6. Section 50124 of the Financial Code is amended to
9 read:

10 50124. (a) A license application must be accompanied by an
11 exhibit containing statements that the applicant agrees to do the
12 following:

13 (1) To maintain staff adequate to meet the requirements of this
14 division, as prescribed by rule or order of the commissioner.

15 (2) To keep and maintain for 36 months from the date of final
16 entry the business records and other information required by law
17 or rules of the commissioner regarding any mortgage loan made
18 or serviced in the course of the conduct of its business.

19 (3) To file with the commissioner any report required under law
20 or by rule or order of the commissioner.

21 (4) To disburse funds in accordance with its agreements and to
22 make a good faith and reasonable effort to effect closing in a timely
23 manner.

24 (5) To account or deliver to a person any personal property such
25 as money, funds, deposit, check, draft, mortgage, other document,
26 or thing of value, that has come into its possession and is not its
27 property, or that it is not in law or equity entitled to retain under
28 the circumstances, at the time that has been agreed upon or is
29 required by law, or, in the absence of a fixed time, upon demand
30 of the person entitled to the accounting or delivery.

31 (6) To file with the commissioner an amendment to its
32 application prior to any material change in the information
33 contained in the application for licensure, including, without
34 limitation, the plan of operation. The commissioner shall, within
35 20 business days of receiving a completed amendment to the
36 application, or within a longer time if agreed to by the licensee,
37 issue an order approving or disapproving the effectiveness of the
38 proposed amendment.

39 (7) To comply with the provisions of this division, and with any
40 order or rule of the commissioner.

1 (8) To submit to periodic examination by the commissioner as
2 required by this division.

3 (9) To advise the commissioner by amendment to its application
4 of any material judgment filed against, or bankruptcy petition filed
5 by, the licensee within five days of the filing.

6 (10) To notify the commissioner, in writing, by certified mail,
7 return receipt requested, prior to opening a branch office in this
8 state, or changing or closing the business location or locations of
9 the applicant or the branch offices of the applicant from which
10 activities subject to this division are conducted.

11 (b) The exhibit also shall contain a space for the applicant to
12 attest that the applicant:

13 (1) Has complied with all applicable state and federal tax return
14 filing requirements for the past three years or has filed with the
15 commissioner an accountant's or attorney's statement as to why
16 no return was filed.

17 (2) Has not committed a crime against the laws of any state or
18 the United States, involving moral turpitude, misrepresentation,
19 fraudulent or dishonest dealing, or fraud, and has disclosed to the
20 commissioner any final judgment entered against it in a civil action
21 upon grounds or allegations of fraud, misrepresentation, or deceit.

22 (3) Has not engaged in conduct that would be cause for denial
23 of a license.

24 (4) Is not insolvent.

25 (5) Has acted with due care and competence in performing any
26 act for which it is required to hold a license under this division.

27 (6) Any other matter as required by rule of the commissioner.